IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 174 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAILALBHAI SHANKARBHAI PATEL

Versus

VAGHELA CHHAGANBHAI MANGALBHAI

Appearance:

1. Special Civil Application No. 174 of 1993

MR JITENDRA M PATEL for Petitioner No. 1-23

MR NS DESAI for Respondent No. 1-5

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/03/2003

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the order passed by the Additional Chief Secretary (Appeals) Revenue Department, Government of Gujarat in

September, 1992, cancelling the N.A.permission granted by the District Panchayat on 29-5-1990, while rejecting the revision application filed by the respondent herein.

2) The brief facts giving rise to the present petition are that the land bearing Survey No.188 paiki 1 acre and 29.5 gunthas of land situated in the sim of village Chikhodara was originally belonged to one Rameshbhai Mangalbhai Patel, who was the land owner of the said land and deceased Mangalbhai Dahyabhai was the tenant of the said land. In the proceedings under Section 32(g) of the Bombay Tenancy and Agricultural Lands Act, 1948, the deceased Mangalbhai became the due purchaser of the said land. It was a new tenure land under the provisions of the Tenancy Act and after the death of Mangalbhai names of the respondents No.1 to 5 were entered as heirs and legal representatives of the deceased Mangalbhai Dahyabhai.

3) It is further stated that the respondent Nos.1 to 5 were not in a position to cultivate the land and hence they made an application to the Deputy Collector, Anand, for the purpose of giving them permission to sell the said land in favour of respondents Nos.6 and 7. In pursuance of the application, Deputy Collector has held regular and proper inquiry under Section 43 of the Tenancy Act and he by his order dated 29-12-1981 had granted permission to the heirs and legal representatives of the deceased Mangalbhai to sell the land in favour of Mukundbhai Gordhanbhai and Kantaben Gordhanbhai. In pursuance of the said permission dated 29-12-1981, the heirs of the deceased Mangalbhai had sold the land to the respondent Nos.6 and 7 by a registered sale-deed dated 8-1-1982 for a consideration of Rs.14,000/-.

4) It is further stated that the respondents No.6 and 7 had made an application to convert the land into non-agricultural land, more particularly, for the purpose of constructing residential house. The Deputy Collector by his order dated 14-3-1989 had decided that the respondents No.6 and 7 to pay the premium at Rs.68,446.80 ps. as the condition for converting land from agricultural to nonagricultural. The respondents No.6 and 7 have paid the premium of Rs.54,757.50 ps., after deducting the premium paid earlier on 27-3-1989 in the Government Treasury.

5) It is further stated that the respondent Nos.6 and 7 made an application dated 25-4-1989 to the Deputy Collector stating that they have to construct residential house but the land was required to be sold to Patel

Bhailalbhai Shankarbhai, present petitioner herein and his son Dipakkumar Bhailalbhai. The Deputy Collector by his order dated 20-5-1989 had granted the permission to respondent Nos.6 and 7 to sell the land in favour of the petitioner and his son Dipakkumar Bhailalbhai. In pursuance of the said permission granted by the Deputy Collector on 20-5-1989, the sale deed dated 24-5-1989 was executed in favour of the petitioner by respondent Nos.6 and 7 for part of the land for Rs.35,000/- and another sale deed dated 24-5-1989 was executed in favour of Dipakkumar Bhailalbhai and then Dharmishtabai Chandubhai for Rs.34,000/-.

6) It is further stated that the said two sale-deeds remained with the office of the Registrar as there was some dispute regarding the stamp duty of Rs.1,189.60 ps. each for the aforesaid two sale deeds. The petitioner has paid the said stamp duty on 14-2-1992 and thereafter, the petitioner got registered sale deeds on 14-2-1992. The sale deeds, therefore, were lying with the Sub-Registrar's office during the period from 24-5-1989 to 14-2-1992 and hence, it could not be produced before any authority.

7) It is further stated that after execution of the sale deed, the petitioner wanted to construct the residential house on the said land and hence, he wanted to move an application for converting the said lands for the purpose of non-agricultural use. However, the registered sale-deeds were with the Registrar's office and the name of the petitioner was not entered into revenue record and hence the petitioner could not make the said application. Therefore the application was made on 27-6-1989 by respondents No.6 and 7 on behalf of the petitioner. The Executive Committee of the District Panchayat and the District Development Officer by their order dated 29-5-1990 have granted permission for non-agricultural use. It is further stated that despite the fact that the respondent Nos.1 to 5 have no locus standi and have no right, title or interest in the suit property, they have filed revision application before the State Government challenging the order of the District Panchayat, Kheda dated 29-5-1990, stating that they were heirs of the original tenant and without their consent no permission could be granted for converting land into non-agricultural land. The petitioner remained present through his advocate before the revisional authority and contended that deceased Mangalbhai Dahyabhai sold the land after obtaining permission from Deputy Collector under Section 43 of the Tenancy Act and hence, the legal heirs of the deceased Mangalbhai had no right, title or

interest in the said land and they ceased to be the owner of the said land. The learned Additional Chief Secretary had accepted the submissions made by the petitioner and had held that the respondents No.1 to 5 have no right, title or interest in the said land and they had no right to take any objection regarding conversion of the land. However, the learned Additional Chief Secretary has further held that the order of District Panchayat, Kheda dated 29-5-1990 was a nullity as the persons, who have made an application for conversion of agricultural land into non-agricultural land had no right, title or interest in the property as they have already sold their lands to the petitioner and his son. It is this order which is under challenge in the present petition.

8) This Court has admitted the petition and granted interim relief on 16-7-1993. The respondents have appeared and filed affidavit in reply. The facts stated and averments made in the petition were denied by the respondent in the said affidavit. It was stated in the said affidavit in reply that the permission granted by the Deputy Collector on 29-12-1981 was absolutely illegal and against the provisions of Rule 25(C) (f) (ii) of the Bombay Tenancy and Agricultural Lands Rules, 1956. It was further stated that the respondents No.6 and 7 have not given the full consideration of the land to them. It was further stated that entry No.11323 and 11324 dated 7-7-1989 were certified on 25-8-1989 and were mutated in the names of the petitioners, Shri Dipakumar Bhailalbhai and Dharmishtaben Chandubhai and as per the said entries they have become the occupants of the said land. The respondent No.6 and 7 had already sold the land to Bhailalbhai and others and their names were mutated on 7-7-1989 and therefore, they being the alleged occupant could have made an application before the competent authority for converting the land into non-agricultural land, i.e. for residential purpose and therefore, the pretext of the registered sale deeds having sent to Registrar's office for registration was nothing but to create a show that they did not possess registered sale deed, in order to show that they were the occupants of the land and hence they could not make an application to the competent authority under Section 65 of the Bombay Land Revenue Code for obtaining the permission for converting the said land into non-agricultural land.

9) The petitioner has also filed affidavit in rejoinder to the affidavit in reply filed by the respondents, denying the facts stated in the affidavit in reply and reiterating the contentions raised in the petition.

10) Heard Mr.Jitendra M.Patel, learned advocate appearing for the petitioner and Mr.N.S.Desai, learned advocate appearing for respondents No.1 to 5. Nobody appears on behalf of respondents No.6 to 8.

11) Mr.Patel, learned advocate for the petitioner has submitted that the order passed by the Additional Chief Secretary holding that the N.A.permission granted by the District Panchayat, Kheda on 29-5-1990 was a nullity and hence the said order was required to be cancelled, is absolutely illegal, unlawful, unjust and contrary to the provisions of law. He has further submitted that the respondents No.1 to 5 have no legal right to challenge the order passed by the District Panchayat, Kheda as the land in question was already sold on 8-1-1982 by deceased Mangalbhai Dahyabhai and the respondents No.1 to 5 are the legal heirs of the said Mangalbhai Dahyabhai. The land was sold pursuant to the permission granted by the Deputy Collector vide his order dated 29-12-1981. After about nine years they have moved the said application before the Additional Chief Secretary challenging the order passed by the District Panchayat, Kheda.

12) Once the revisional authority has found that the respondents No.1 to 5 have no locus standi to challenge the order of the District Panchayat, Kheda dated 29-5-1990, the revision application ought to have been rejected by the revisional authority without making any further observations in this regard, by cancelling the N.A.permission. The revisional authority has acceded to his jurisdiction, which is not permissible under the law and hence the said observation should have been removed from the order and the order cancelling the N.A.permission should be quashed and set aside.

13) Mr.N.S.Desai, learned advocate appearing for the respondents No.1 to 5, on the other hand, supported the order passed by the revisional authority and submitted that the order cancelling the N.A. permission was rightly passed by the revisional authority. He has further submitted that the order passed by the District Panchayat, Kheda was a nullity as the persons who have made the application for N.A. permission did not have any authority to move such an application as they did not have any right, title or interest in the property. No period of limitation would come in the way for quashing and setting aside the said order and the revisional authority can suo motu pass said order cancelling the N.A. permission.

14) I have heard learned advocates appearing for the respective parties and I have also considered their submissions. I have gone through the memo of petition and the documents attached therewith. I have also perused the affidavit in reply, as well as the affidavit in rejoinder filed by the respective parties. I am of the view that Additional Chief Secretary is not justified in cancelling the order granting N.A.permission. The respondents No.1 to 5 have sold the land in question long back and they did not have any right, title or interest to challenge the order passed by the District Panchayat, Kheda. Even otherwise, the land was sold in the year 1982 and the order granting N.A.permission was challenged before the revisional authority in 1990. The N.A.permission was granted on 29-5-1990 and the revisional application was preferred in the year 1992. It was filed after more than one and a half year. The Hon'ble Supreme Court while dealing with similar issue in the case of State of Gujarat v. Patel Raghav Natha and others (1969) 10 GLR, 992, wherein it is held that "it is true that there is no period of limitation prescribed under Section 211 of the Bombay Land Revenue Code, but it is plain that this power must be exercised in a reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order. It is further held that Section 5, itself, indicates the length of reasonable time, within which the Commissioner must act under Section 211. Section 65 shows that the period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter so urgent that the permission shall be deemed to have been granted. Reading Section 211 and 65, it is clear that the Commissioner must exercise his revisional powers within a few months on the order of the Collector. In that case, the permission was granted to the petitioner to use the land for non-agricultural land by order dated July 2, 1960 and the same was sought to be cancelled by the Commissioner on October 12, 1961. Even that period was not considered to be reasonable period by the Hon'ble Supreme Court. Taking clue from this decision, I am of the view that Additional Chief Secretary is not justified in cancelling the order granting N.A.permission after the lapse of the period of more than one and a half year. I am also not endorsing the view taken by the Additional Chief Secretary that the order passed by the District Panchayat, Kheda is nullity. In the given facts and circumstances of the case, the application seeking N.A.permission was moved by the respondents No.6 and 7. The property was already sold earlier and registered sale deed was lying with the Sub-Registrar only because of the

dispute regarding stamp duty. For all practical purposes the property was vested with the petitioner. It was only for the sake of convenience and for procedural purposes that the application was moved in the name of the respondents No.6 and 7. The same cannot be considered to be an application contrary to the provisions of law. This Court had an occasion to deal with the similar issue in the case of Gopalbhai Karamsibhai Patel & ors. v. C.M.Joshi, Deputy Secretary, Revenue Department, (1976) 17 GLR page 108, wherein it is held that "Where such lawful lease has been created by the occupant for N.A. use and where the relevant statute requires any permission to be obtained by the occupant so that such N.A. use can be made or continued by the concerned tenants. It would be an implied obligation of the occupant to make necesary application for N.A.purpose. The occupant cannot evict these tenants so long as they were ready and willing to pay rent in view of the statutory protection afforded by the Bombay Rent Act.

15) Considering the aforesaid observations made by this Court, it cannot be said that application moved by respondents No.6 and 7 seeking N.A.permission is not in accordance with law and order passed on the basis of the said application is a nullity.

15) Having regard to the facts and circumstances of the case and having regard to the law laid down by this Court, as well as, by the Hon'ble Supreme Court, I am of the view that Additional Chief Secretary is not justified in cancelling the N.A.permission, earlier granted by the District Panchayat, Kheda. This petition, therefore, succeeds. Rule is made absolute with no order as to costs.

(K.A.Puj, J.)
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